

EXHIBIT 150

Pierre, SD

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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IN RE: PHARMACEUTICAL INDUSTRY) MDL No. 1456
AVERAGE WHOLESALE PRICE) Civil Action No.
LITIGATION) 01-12257-PBS

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THIS DOCUMENT RELATES TO:) Hon. Patti B.
United States of America ex rel.) Saris
Ven-A-Care of the Florida Keys,)
Inc. v. Abbott Laboratories, Inc.)
Civil Action No. 06-11337-PBS;) TRANSCRIPT OF
United States of America ex rel.) PROCEEDINGS
Ven-A-Care of the Florida Keys,)
Inc. v. Dey, Inc., et al., Civil) DEPOSITION OF
Action No. 05-11084-PBS; and) THE SOUTH DAKOTA
United States of America ex rel.) DEPARTMENT OF
Ven-A-Care of the Florida Keys,) SOCIAL SERVICES
Inc. v. Boehringer Ingelheim) by LARRY IVERSEN
Corp., et al., Civil Action No.)
07-10248-PBS) DECEMBER 15, 2008

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<p>1 VIDEOTAPE DEPOSITION OF THE SOUTH DAKOTA 2 DEPARTMENT OF SOCIAL SERVICES by LARRY IVERSEN 3 4 5 BEFORE: Carla A. Bachand, RMR, CRR 6 Court Reporter and Notary Public 7 Pierre, South Dakota 8 DATE: December 15, 2008, at 8:15 a.m. 9 PLACE: Kings Inn Convention Center 10 110 East Sioux Avenue 11 Pierre, South Dakota 12 13 14 15 16 17 18 19 20 21 22</p>	<p>1 A P P E A R A N C E S (CONTINUED) 2 3 Appearing as Local Counsel for Ms. Khandhar and 4 Ms. Ramsey: 5 MICHAEL J. SCHAFFER, ESQ. 6 SCHAFFER LAW OFFICE 7 412 West 9th St., #1 8 Sioux Falls, SD 57104 9 10 Appearing on behalf of the Department: 11 DANIEL J. TODD, ESQ. 12 SOUTH DAKOTA DEPARTMENT OF SOCIAL SERVICES 13 Legal Counsel, 700 Governor's Drive 14 Pierre, South Dakota 57501 15 16 17 Also Present: Videographer Torre Kavanaugh 18 19 20 21 22</p>
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<p>1 A P P E A R A N C E S 2 3 Appearing on behalf of Dey: 4 LISA KHANDHAR, ESQ. 5 KELLEY DRYE & WARREN 6 101 Park Avenue 7 New York, New York 10178-0002 8 9 Appearing on behalf of Abbott: 10 HILARY A. RAMSEY, ESQ. 11 JONES DAY 12 51 Louisiana Ave. NW 13 Washington, D.C. 20001-2113, 14 15 Appearing on behalf of the United States: 16 JUNE C. ACTON, ESQ. 17 UNITED STATES ATTORNEY'S OFFICE 18 Assistant United States Attorney 19 99 NE Fourth Street, 3rd Floor 20 Miami, Florida 33132 21 22 (CONTINUED)</p>	<p>1 I N D E X 2 3 WITNESS: LARRY IVERSEN PAGE 4 Examination by Ms. Khandhar..... 011, 169 5 Examination by Ms. Ramsey..... 120, 170 6 Examination by Ms. Acton..... 148 7 8 9 D E Y E X H I B I T S 10 NUMBER DESCRIPTION PAGE 11 Exhibit Dey 904 - Notice of Deposition..... 016 12 Exhibit Dey 905 - South Dakota Medical 13 Assistance Program Pharmacy 14 Manual..... 045 15 Exhibit Dey 906 - Form..... 049 16 Exhibit Dey 907 - Affidavit and Certificate.... 064 17 Exhibit Dey 908 - HHC014-1560 - 1563..... 072 18 Exhibit Dey 909 - HHC014-1518 - 1526..... 076 19 Exhibit Dey 910 - HHD127-0418 - 0424..... 082 20 Exhibit Dey 911 - South Dakota Department of 21 Social Services Consultant 22 Contract..... 085</p>

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<p>1 DEY EXHIBITS (CONTINUED)</p> <p>2 NUMBER DESCRIPTION PAGE</p> <p>3 Exhibit Dey 912 - AWP-IL-0010038 - 0042..... 102</p> <p>4</p> <p>5</p> <p>6 ABBOTT EXHIBITS</p> <p>7 NUMBER DESCRIPTION PAGE</p> <p>8 Exhibit Abbott-SD 001 - Cross-notice..... 129</p> <p>9 Exhibit Abbott-SD 002 - HHD006-0335 - 0340..... 143</p> <p>10</p> <p>11</p> <p>12 GOVERNMENT EXHIBITS</p> <p>13 NUMBER DESCRIPTION PAGE</p> <p>14 Exhibit Government 001 - Federal Register,</p> <p>15 Vol. 52, No. 147..... 161</p> <p>16 Exhibit Government 002 - HHD038-0253..... 153</p> <p>17 Exhibit Government 003 - HHD038-0422..... 154</p> <p>18 Exhibit Government 004 - HHC014-1523..... 155</p> <p>19 Exhibit Government 005 - HHC014-1555..... 155</p> <p>20</p> <p>21</p> <p>22</p>	<p>1 MS. KHANDHAR: Just for the record,</p> <p>2 before we begin, I'd like to --</p> <p>3 MS. RAMSEY: Lisa, we need to get our</p> <p>4 appearance on the record, please. This is Hilary</p> <p>5 Ramsey from Jones Day, I represent Abbott Labs.</p> <p>6 MR. SCHAFFER: This is Mike Schaffer</p> <p>7 from the Schaffer Law Office in Sioux Falls,</p> <p>8 South Dakota, and I'm appearing as local counsel</p> <p>9 for Ms. Ramsey and Ms. Khandhar in this case.</p> <p>10 MS. KHANDHAR: Sorry about that. Just</p> <p>11 for the record, before we begin, this deposition</p> <p>12 was scheduled to begin on Friday, December 12th,</p> <p>13 2008, and everyone here, except for Mike</p> <p>14 Schaffer, local counsel, who is appearing by</p> <p>15 phone today, was present and ready for the</p> <p>16 deposition to begin at 3:30 in the afternoon on</p> <p>17 Friday. And at that time Assistant Attorney</p> <p>18 General Dan Todd objected to the deposition</p> <p>19 proceeding and stated that according to his</p> <p>20 understanding of the South Dakota local rules,</p> <p>21 the deposition would not be able to go forward</p> <p>22 without one of the examining attorneys being</p>
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<p>1 MONDAY, DECEMBER 15, 2008</p> <p>2</p> <p>3 VIDEOGRAPHER: Today is the 15th of</p> <p>4 December 2008. The time is approximately 8:15</p> <p>5 a.m. The location is the Kings Inn Hotel and</p> <p>6 Conference Center, 110 East Sioux Avenue, Pierre,</p> <p>7 South Dakota 57501. My name is Torre Kavanaugh,</p> <p>8 certified court video specialist, representing</p> <p>9 Henderson Legal Services. This is case number</p> <p>10 AWP-MDO entitled Ven-A-Care of the Florida Keys,</p> <p>11 Incorporated, et al., versus Dey, Incorporated,</p> <p>12 et al., and the deponent is Larry Iversen.</p> <p>13 Counsel and all present will please identify</p> <p>14 themselves for the record.</p> <p>15 MS. KHANDHAR: This is Lisa Khandhar</p> <p>16 from Kelley, Drye and Warren and I'm representing</p> <p>17 the Dey defendants.</p> <p>18 MS. ACTON: This is June Acton and I'm</p> <p>19 representing the United States.</p> <p>20 MR. TODD: I'm Dan Todd, I am</p> <p>21 representing the State of South Dakota Department</p> <p>22 of Social Services.</p>	<p>1 admitted in the state of South Dakota or with</p> <p>2 local counsel being present.</p> <p>3 For the record, Dey believes that the</p> <p>4 Assistant Attorney General's position is</p> <p>5 meritless and I am just going to hand back to him</p> <p>6 the local rules that he had given me on Friday</p> <p>7 stating his position. Also, after closer</p> <p>8 examination, these local rules are for the state</p> <p>9 of South Carolina, but even if these rules had</p> <p>10 been the parallel rules for South Dakota, this</p> <p>11 would have been a meritless position. And the</p> <p>12 fact that this deposition should have been</p> <p>13 started on Friday and is now going forward on</p> <p>14 Monday is costing our clients unnecessary</p> <p>15 expenses, including local counsel's charges for</p> <p>16 the day and my travel costs.</p> <p>17 According to Rule 45 of the Federal</p> <p>18 Rules of Civil Procedure, it stands for the</p> <p>19 proposition that local counsel is not required as</p> <p>20 long as an examining attorney is admitted where</p> <p>21 the case is pending. This case is pending in the</p> <p>22 District of Massachusetts, where I am admitted</p>

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<p>1 Q. What's your understanding of what</p> <p>2 "actual cost" means here?</p> <p>3 A. I would assume that is the actual cost</p> <p>4 to the pharmacy.</p> <p>5 Q. Can you please turn to page three. And</p> <p>6 if you could look at the paragraph under the</p> <p>7 heading "frequency of MAC updates," in the middle</p> <p>8 of the paragraph it states, "SXC completes a</p> <p>9 review of the acquisition cost and the MAC price</p> <p>10 for every product on the MAC list," correct?</p> <p>11 A. Yes.</p> <p>12 Q. Do you know if South Dakota Medicaid</p> <p>13 has access to this review of actual acquisition</p> <p>14 cost?</p> <p>15 A. No, we do not have access to that.</p> <p>16 Q. Would South Dakota Medicaid be able to</p> <p>17 have access to this list if it requested access?</p> <p>18 A. I don't know that.</p> <p>19 Q. If you turn to page two, if you turn</p> <p>20 back one page to the section with the heading</p> <p>21 "methodology," are you familiar at all with the</p> <p>22 methodology used by SXC to determine MAC pricing?</p>	<p>1 dispense generic products as well as to make</p> <p>2 recommendations to prescribers that they</p> <p>3 substitute brand products with generic therapy</p> <p>4 alternatives." As we established earlier,</p> <p>5 providing the provider with a profit was an</p> <p>6 important concern to South Dakota Medicaid,</p> <p>7 correct?</p> <p>8 A. Yes.</p> <p>9 Q. And in fact this concern directly</p> <p>10 informed the reimbursement level on MAC prices,</p> <p>11 according to this sentence that I just read out</p> <p>12 loud, correct?</p> <p>13 A. Yes.</p> <p>14 Q. Would you agree that SXC has a lot of</p> <p>15 leeway here in determining what the MAC prices</p> <p>16 are?</p> <p>17 A. I don't -- I guess that would be an</p> <p>18 opinion that I haven't necessarily thought about,</p> <p>19 no.</p> <p>20 Q. What would be your opinion, thinking</p> <p>21 about it now?</p> <p>22 A. You know, I don't know enough about</p>
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<p>1 A. No.</p> <p>2 Q. If you look at the first bullet point,</p> <p>3 it states, "First, the final selection of drug</p> <p>4 products is made. Acquisition prices are</p> <p>5 obtained from wholesalers, retailers, and the</p> <p>6 Medispan drug file." Do you know if these</p> <p>7 acquisition prices are prices that South Dakota</p> <p>8 Medicaid also has access to?</p> <p>9 A. I would believe that we do not have</p> <p>10 access to those prices.</p> <p>11 Q. And why do you believe that?</p> <p>12 A. Because I'm not aware of any file or</p> <p>13 any sort of list that we have that includes</p> <p>14 acquisition prices.</p> <p>15 Q. If you look at the second bullet point</p> <p>16 at the third sentence, it states, "The MAC price</p> <p>17 is then applied across all package sizes</p> <p>18 available, but is structured to insure that the</p> <p>19 profit to the pharmacist to dispense the generic</p> <p>20 product is higher than that associated with</p> <p>21 dispensing the brand product. This strategy</p> <p>22 provides pharmacists with an incentive to</p>	<p>1 their pricing methodology, other than what's</p> <p>2 described here, to really formulate an opinion.</p> <p>3 Q. And do providers still receive a</p> <p>4 dispensing fee if reimbursement is made based on</p> <p>5 MACs in South Dakota?</p> <p>6 A. Yes.</p> <p>7 Q. If we look again at the last sentence I</p> <p>8 read, it states, "This strategy provides</p> <p>9 pharmacists with an incentive to dispense generic</p> <p>10 products as well as to make recommendations to</p> <p>11 prescribers that they substitute brand products</p> <p>12 with generic therapy alternatives," and as you</p> <p>13 testified earlier, it was important to South</p> <p>14 Dakota Medicaid to incentivize providers to use</p> <p>15 generic drugs, correct?</p> <p>16 A. It's important for providers to</p> <p>17 dispense generic drugs.</p> <p>18 Q. And this was because it would result in</p> <p>19 greater savings for South Dakota Medicaid,</p> <p>20 correct?</p> <p>21 A. Correct.</p> <p>22 Q. In your -- strike that. Would you</p>

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<p>1 Q. Can you describe for me the documents 2 that she did show you? 3 A. Boy, I just don't recall exactly what 4 they were. There may have been some state plan 5 documents. 6 Q. What else? 7 A. That's all I recall. 8 Q. Did she show you any legal documents 9 such as deposition transcripts? 10 A. No. 11 Q. Did she show you any other type of 12 legal documents? 13 A. No. 14 Q. Did the United States Attorney provide 15 an overview on the legal theories of the case? 16 A. No. 17 Q. Did the United States Attorney provide 18 any indication of the United States's claims in 19 this action? 20 A. No. 21 Q. Besides this meeting that you referred 22 to last Thursday, have you had any other</p>	<p>1 Q. Any other way? 2 A. No. 3 Q. When did you first become aware of the 4 United States lawsuit against Abbott, Dey, and 5 Roxane? 6 A. When we received the subpoena. 7 Q. Did South Dakota ever receive 8 notification from CMS or the Department of 9 Justice indicating that it should retain 10 documents relating to AWP or drug pricing? 11 A. To the best of my knowledge, no. 12 Q. Have you ever personally been advised 13 to retain documents relating to South Dakota's 14 Medicaid reimbursement system or its knowledge 15 about published AWP's? 16 A. No. 17 Q. When South Dakota established its 18 definition of estimated acquisition cost as AWP 19 minus 10.5 percent, how was the figure of 10.5 20 percent determined? 21 A. I don't know that, that was before my 22 time with the department.</p>
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<p>1 discussions with attorneys from the United States 2 Department of Justice or CMS regarding drug 3 pricing litigation? 4 A. No. 5 Q. Is there anything else which you recall 6 the United States Attorney telling you that I 7 have not asked about? 8 A. No. 9 Q. Approximately how long did you meet? 10 A. Oh, somewhere between an hour and hour 11 and a half. 12 Q. Have you ever reviewed any complaints 13 related to the matter for which we are here 14 today? 15 A. No. 16 Q. Do you have an understanding about the 17 nature of the lawsuit? 18 A. A very basic understanding. 19 Q. And how did you come to that 20 understanding? 21 A. Simply by reading the subpoena that we 22 had received.</p>	<p>1 Q. In preparation for your deposition 2 today, were you educated as to how this figure 3 was set? 4 A. No. 5 Q. Do you have any insight as to how that 6 figure was determined? 7 A. I don't. 8 Q. Do you know when the 10.5 percent 9 discount was first applied in the South Dakota 10 Medicaid reimbursement formula? 11 A. I don't know specifically, but it's 12 been 10 and a half percent for as long as I can 13 recall. 14 Q. And you began work with the department 15 around 1995; is that correct? 16 A. Approximately 13 years. 17 Q. I'm sorry, I didn't hear your answer, 18 sir. 19 A. Yes, approximately 13 years. 20 Q. And similarly, I believe you previously 21 testified that the dispensing fee has remained at 22 the \$4.25 level since you began with the</p>

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<p>1 department around 1995.</p> <p>2 A. I think it's 4.75.</p> <p>3 Q. I'm sorry, I misspoke. 4.75 --</p> <p>4 A. Yes.</p> <p>5 Q. -- has remained the dispensing fee</p> <p>6 level since at least as early as 1995; is that</p> <p>7 correct?</p> <p>8 A. There may have been a change in there</p> <p>9 at some point, I don't recall. I can recall it's</p> <p>10 been 4.75 for a number of years.</p> <p>11 Q. How was the \$4.75 level selected for</p> <p>12 the South Dakota dispensing fee?</p> <p>13 A. I don't know that.</p> <p>14 Q. As part of your preparation for today's</p> <p>15 deposition, were you educated at all regarding</p> <p>16 South Dakota's knowledge about the adequacy or</p> <p>17 inadequacy of its dispensing fee rate?</p> <p>18 A. No.</p> <p>19 Q. Are you familiar with the term</p> <p>20 nontraditional pharmacies?</p> <p>21 A. No.</p> <p>22 Q. Have you ever heard of home IV</p>	<p>1 may not be aware of them?</p> <p>2 A. Other examples other than nursing</p> <p>3 facilities?</p> <p>4 Q. Yes.</p> <p>5 A. That's the limit of my experience and</p> <p>6 knowledge with them.</p> <p>7 Q. If South Dakota -- if South Dakota's</p> <p>8 Medicaid office was going to make a change to its</p> <p>9 reimbursement methodology, does the agency have</p> <p>10 authority to do so or must any change to the</p> <p>11 reimbursement formula go through the legislature?</p> <p>12 A. Changes in administrative rule are</p> <p>13 required to go through an interim rules committee</p> <p>14 that is made up of legislative members.</p> <p>15 Q. I'll give an example and maybe you can</p> <p>16 walk me through this. If South Dakota wanted to</p> <p>17 increase its dispensing fee, how would it go</p> <p>18 about doing so?</p> <p>19 A. If we wanted to increase our dispensing</p> <p>20 fee, first we would look to see if a state plan</p> <p>21 amendment needed to be made and then we would go</p> <p>22 through the process that I previously described.</p>
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<p>1 pharmacies?</p> <p>2 A. Could you repeat that?</p> <p>3 Q. Yes. Have you ever heard of home IV</p> <p>4 pharmacies?</p> <p>5 A. No.</p> <p>6 Q. We discussed earlier some references to</p> <p>7 closed pharmacies; do you recall that?</p> <p>8 A. Yes.</p> <p>9 Q. What is your understanding of a closed</p> <p>10 pharmacy?</p> <p>11 A. My understanding of a closed pharmacy</p> <p>12 is it's a pharmacy that provides prescription</p> <p>13 drugs to individuals in nursing facilities. They</p> <p>14 don't necessarily have a store front where they</p> <p>15 dispense drugs to someone walking in through the</p> <p>16 door.</p> <p>17 Q. Are you aware of any other types of</p> <p>18 examples besides nursing home pharmacies for</p> <p>19 closed pharmacies?</p> <p>20 A. No.</p> <p>21 Q. Is it fair to say that you have no</p> <p>22 reason to disbelieve that these exist, you just</p>	<p>1 If a rules change were to be required, then I</p> <p>2 would also then say we would have to go through</p> <p>3 the process that I previously described, that</p> <p>4 includes meeting in front of the legislative</p> <p>5 interim rules committee.</p> <p>6 Q. From 1991 through 2003, did South</p> <p>7 Dakota take any efforts to increase its</p> <p>8 dispensing fee?</p> <p>9 A. I don't immediately recall any actions</p> <p>10 to change the dispensing fee.</p> <p>11 MS. RAMSEY: Lisa, if I could please</p> <p>12 ask you to hand the court reporter the cross-</p> <p>13 notice.</p> <p>14 MS. KHANDHAR: Sure.</p> <p>15 MS. RAMSEY: I ask this please be</p> <p>16 marked as Abbott South Dakota 1.</p> <p>17 (Deposition Exhibit Abbott-SD 001</p> <p>18 marked for identification.)</p> <p>19 Q. (BY MS. RAMSEY) Mr. Iversen, do you</p> <p>20 have that document in front of you?</p> <p>21 A. Yes, I do.</p> <p>22 Q. If you could please turn to Schedule A,</p>

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